

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OUSSAMA EL OMARI,

Plaintiff,

– against –

RAS AL KHAIMAH FREE TRADE ZONE
AUTHORITY, A/K/A R.A.K. FREE TRADE
ZONE AUTHORITY, A/K/A RAKFTZA, KREAB
(USA) INC., SHEIKH SAUD BIN SAQR AL
QASIMI, and THE ARKIN GROUP LLC

Defendants.
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No. 1:16-CV-3895 (NRB)

**COMMENT LETTER BY ESSAM ABDULAMIR HAMADI AL FADHLY
AL TAMIMI ON THE DECLARATION OF EXPERT WITNESS
RADHA STIRLING SUBMITTED BY PLAINTIFF**

I, Essam Abdulamir Hamadi Al Fadhli Al Tamimi, declare and submit the following comment letter on the declaration of expert witness Radha Stirling submitted by Plaintiff and dated November 29, 2016 (“Stirling’s Declaration” or “Declaration”), under penalty of perjury under the laws of the United States of America:

1. I am the same Essam Abdulamir Hamadi Al Fadhli Al Tamimi who submitted an independent expert report dated October 27, 2016 (the “Expert Report”) on several issues pertaining to UAE law in the present case.
2. I have been instructed by Dechert LLP, Defendants’ Counsel, to provide an independent expert comment letter on Stirling’s Declaration. For purpose of brevity, I do not repeat my qualifications nor provide an extensive description of my experience which were set out in detail in the Expert Report.

3. Save as otherwise stated, or as the context may require, capitalized terms and definitions used in this comment letter shall have the same meaning as was ascribed to them in my Expert Report.
4. In preparing this comment letter, and in addition to the documents provided to me previously by Dechert LLP for purpose of preparing my Expert Report, Defendants' Counsel have been provided with a copy of Plaintiff's brief in opposition to Defendants' amended motion to dismiss and Stirling's Declaration which I have reviewed.
5. I have also relied on various other documents, literature and materials which I make available for the Parties and the Court.
6. I reiterate my independence from the Parties and their legal advisors and confirm once again that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of my work product. The following is based on my experience of more than thirty (30) years as an Advocate before the federal and local courts and tribunals of the UAE.
7. The UAE has been instrumental in devising a respected, independent judicial system. As stated in my Expert Report, the independence of the judicial authority is guaranteed by Articles 25 and 94 of the UAE Constitution (see paragraph 30 of the Expert Report). The World Justice Project, a Washington D.C.-based independent organization, ranked the UAE 25 globally in its 2016 edition of its Rule of Law Indicator Report, ahead of the United States of America. The World Justice Project defines the rule of law as a system in which « *the following four principles are upheld* :
 1. *The government and its officials and agents as well as individuals and private entities are accountable under the law.*
 2. *The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property and certain core human rights.*
 3. *The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.*

4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve. » [Emphasis added.]

8. Bribing or attempting to bribe a public official is a severe punishable crime under the UAE Federal Penal Code. With reference to corruption, the World Justice Project ranked the UAE 15 globally, ahead of the United States of America and France, in its 2016 edition of its section on the Absence of Corruption in its Rule of Law Report.
9. During my lengthy career of over thirty (30) years as an Advocate before the UAE courts and tribunals, I have never encountered, nor have I heard of cases involving bribery and corruption of the UAE judicial body. I sincerely believe that parties to a case filed before any of the local and federal UAE courts and tribunals are afforded equal arms and opportunity to present and defend their legal position. Simply put, as is the case in the United States of America, some legal battles are won, while others are lost.
10. In paragraph 49 of her Declaration (see paragraph 49), Ms. Stirling enumerates several obstacles she alleges to have encountered in the cases she was involved in against Nakheel, a subsidiary of government-owned Dubai World. As cited in my Expert Report (see paragraph 31), there are numerous judgments issued against various UAE government entities. Specifically regarding Nakheel, it is a matter of public knowledge within the UAE legal community that there are several judgments issued against both Dubai World, a government of Dubai entity and its subsidiary Nakheel (see Dubai World Tribunal Judgment dated February 14, 2011 in case number DWT-0019-2010, Paramount International Trading v. Nakheel PJSC, in which the Tribunal found that Nakheel violated its obligations under a property purchase agreement; Dubai World Tribunal Judgment dated February 2, 2012 in case number DWT-0020-2011, David John Nicholson v. Nakheel PJSC, in which Nakheel was ordered to pay Mr. Nicholson the claimed employment benefits following his termination; Dubai Court of Appeal, Appeal No. 789 for the year 2014 filed by an individual against Nakheel PJSC and its subsidiary Dubai Waterfront in which Nakheel and Dubai Waterfront were found to be in breach of their obligations under property purchase agreements. The judgment was recently confirmed by the Dubai Court of Cassation, Cassation No.167 for the year 2016). My firm, Al Tamimi &

Company, has represented several clients in their claims against Nakheel and its subsidiary Dubai Waterfront, and prevailed. Thus, and as expressed in my Expert Report, there is no basis to believe that El Omari's claims would not be given a fair hearing in the UAE.

11. The favourable judicial environment has lead more than 70 international law firms – mostly U.S. and British – to establish a presence in the UAE. These law firms represent both international and local clients, including UAE government entities.
12. Unlike myself, Ms. Stirling has not practiced before the UAE courts and tribunals. As a practicing UAE national attorney, I have been licensed as an Advocate since 1985 and have full rights of audience before federal and local courts and tribunals. The practice of law in the UAE is regulated at federal level, and in the case of the Emirate of Dubai, also at the Emirate level. In Dubai, the Dubai Legal Affairs Department (“DLAD”) regulates the legal profession. In the UAE, only UAE nationals have full rights of audience before the federal and local courts and tribunals. Practicing UAE national attorneys are referred to as Advocates. On the other hand, foreigners, such as Mrs. Stirling, do not have rights of audience and are deemed, if registered with the DLAD, to be Legal Consultants. While Legal Consultants in the UAE may advise on issues of UAE law, they are not permitted to appear before the federal and local courts and tribunals.
13. In her Declaration, Ms. Stirling provides in paragraphs 76-77 a list of examples of the the work she has been involved in. Her observations are difficult to verify because the absence of names of the parties and/or case numbers precludes the ability to identify the relevant public records. Where she provided sufficient details to identify the cases, the known facts do not substantiate her broad-brush conclusions, and in fact, some of the cases cited in Ms. Stirling's report confirm that the UAE system was adequate and fair to defendants, as Ms. Stirling's report indicates several of the defendants were released or acquitted:
 - a. Cat Le-Huy was provided access to legal representation and was “released without charge.” Stirling, ¶ 77(1).
 - b. Scott Richards was able to make bail on charges for breach of cybercrime laws. The charges against him were later dropped by the UAE government.

Id. ¶ 77(6). Additionally, Ms. Stirling alleges that the “enacted” law in question “had not been published” *Id.* ¶ 77(6). I do not agree with this statement because all laws in the UAE must and are published, and if we were to presume that a law has not been published, then such law would simply not be enforceable under the laws of the UAE.

- c. Safi Qurashi was released and has been quoted expressing his “faith in Dubai justice system.” *Id.* ¶ 77(7). I exhibit true copy of the article titled “*I had never given up on Dubai*” dated August 15, 2012 and published in the Gulf News, available at: <http://gulfnews.com/xpress/safi-qurashi-i-had-never-given-up-on-dubai-1.1062413> (accessed January 4, 2017).
- d. Hervé Jaubert lost a US jury trial charging abuse of process. *Id.* ¶ 77(10). I exhibit true copy of the article titled “Dubai World defeats French ex-spy in Florida court” dated March 2, 2011 and publish in the National newspaper, available at: <http://www.thenational.ae/news/world/americas/dubai-world-defeats-french-ex-spy-in-florida-court> (accessed January 4, 2017).
- e. Matt Joyce and Marcus Lee, who were charged with embezzlement and fraud, were “fully acquit[ed]” by the UAE courts. *Id.* ¶ 77(12)

14. For the reasons stated above, as well as those expressed in my Expert Report, I firmly believe that the UAE judicial system guarantees the right to a fair trial to parties to a dispute, irrespective of the parties’ nationality and/or their nature (i.e. private, semi-public, public). As such, I conclude that El Omari’s claims would have been given a fair hearing in the UAE.

I declare, certify, verify and state, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on the 5th day of January 2017



Essam Abdulmir Hamadi Al Fadhli Al Tamimi